

### **REMARKS/ARGUMENTS**

Applicants appreciate the thorough examination of the present application, as evidenced by the first Official Action. Applicants also appreciate the indication that Claims 2, 6, 9, 13, 16 and 20 are allowable. Nonetheless, the Official Action objects and/or rejects the remaining claims on one or more grounds. That is, the Official Action objects to all of the pending claims, namely Claims 1-21, for including a number of informalities. The Official Action also provisionally rejects Claims 1 and 8 under the judicially-created doctrine of double patenting in view of U.S. Patent Application No. 10/758,854. And finally, the Official Action rejects Claims 1, 3-5, 7-8, 10-12, 14-15, 17-19 and 21 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,096,247 to Jayam et al. As explained below, Applicants respectfully submit that the claims are proper, patentably distinct from the '854 application and Jayam. Nonetheless, Applicants have amended various ones of the claims to further clarify the claimed invention. In view of the amended claims and the remarks presented herein, Applicants respectfully request reconsideration and allowance of all of the pending claims of the present application.

#### ***A. The Claims are Proper***

The first Official Action objected to the claims as including a number of informalities. More particularly, the Official Action objected to claimed recitations including "capable of" as not being positive recitations, and objected to the phrase "A computer program product" as not being acceptable language in computer-processing related claims. Applicants respectfully disagree, and note that both "capable of" and "computer program product" are perfectly acceptable claim language, and that the Official Action does not cite any support for its conclusions. Nonetheless, Applicants have amended various ones of the claims to replace the "capable of" language with "configured to" language, which Applicants also submit is perfectly acceptable claim language. In addition, Applicants have amended Claims 15-21 to remove the allegedly offending "computer program product" language.

For at least the foregoing reasons, Applicants respectfully submit that the objections to the claims are overcome.

***B. Obviousness-Type Double Patenting***

The Official Action provisionally rejects Claims 1 and 8 under the judicially-created doctrine of double patenting in view of U.S. Patent Application No. 10/758,854. As explained below, however, Applicants respectfully submit that not only has the Official Action failed to establish *prima facie* obviousness of Claims 1 and 8 over the claims of the '854 application, but that at least as amended, Claims 1 and 8 do in fact patentably distinguish over the claims of the '854 application. Accordingly, Applicants respectfully traverse the provisional double-patenting rejection of Claims 1 and 8.

As to independent Claim 1 of the present application, the Official Action alleges that Claims 1 and 8 of the '854 application recite portions of the recited system, but appears to concede that Claims 1 and 8 of the '854 application does not teach or suggest configuring the sizes of one or both of first and second congestion windows of first and second hosts based on upon the first transmission rate, the size of the second congestion window, the second transmission rate and the size of the first congestion window. Similarly, as to independent Claim 8, the Official Action alleges that Claim 16 of the '854 application recites portions of the recited method, but appears to concede that Claim 16 of the '854 application does not teach or suggest configuring one or both of the congestion windows based upon the first transmission rate, the size of the second congestion window, the second transmission rate and the size of the first congestion window.

As explained in the MPEP, obviousness-type double patenting analysis follows the obviousness analysis under 35 U.S.C. § 103, except that the application principally underlying the rejection is not considered prior art. MPEP § 804 II.B.1. As further explained in the MPEP, all of the elements of a claimed invention must be taught or suggested by the prior art to establish *prima facie* obviousness of a claimed invention. MPEP § 2143.03, *citing In re Royka*, 490 F.2d 981 (CCPA 1974). Even given the '854 application to support an obviousness-type double patenting rejection of independent Claims 1 and 8, the Official Action fails to allege any prior art (or the '854 application) or knowledge generally known to those skilled in the art at the time of the invention, that teach or suggest, individually or in combination, all of the elements of the claimed invention. More particularly, for example, nowhere does the Official Action allege that

either the '854 application or any prior art teaches or suggests, individually or in combination, configuring the sizes of one or both of the first and second congestion windows of the first and second hosts based upon the first transmission rate, the size of the second congestion window, the second transmission rate and the size of the first congestion window, as recited by the claimed invention.

For at least the foregoing reasons, Applicants respectfully submit that the provisional obviousness-type double patenting rejection of Claims 1 and 8 is overcome.

***C. Claims 1, 3-5, 7-8, 10-12, 14-15, 17-19 and 21 are Patentable***

Finally, the Official Action rejects Claims 1, 3-5, 7-8, 10-12, 14-15, 17-19 and 21 as being anticipated by Jayam. Briefly, Jayam discloses a bi-directional data flow between first and second host computers. As disclosed, the first and second host computers separately store transmit-facilitating parameters and receive-facilitating parameters in a transmit TCB (transmission control block) and a receive TCB, respectively. As disclosed, the transmit-facilitating parameters may include a current congestion window (ICNG\_WIN/CNG\_WIN), which tracks congestion. These parameters may then be utilized at a respective host computer to simultaneously service transmit and receive requests to transmit data to, and receive data from, the other host computer, thereby effectuating bi-directional communication.

Amended independent Claim 1 recites an apparatus including a processor. As recited, the processor is configured to transmit multiplexed data at a first transmission rate and operate with a first congestion window. The processor is also configured to receive multiplexed data at a second transmission rate from a second host separate from the apparatus and configured to operate with a second congestion window. And as also recited, the processor is configured to set at least a size of the second congestion window based upon (a) the first transmission rate, (b) the size of the second congestion window, (c) the second transmission rate, and (d) the size of the first congestion window.

In contrast to amended independent Claim 1, Jayam does not teach or suggest an apparatus configured to set the congestion window of a host from which the apparatus is configured to receive multiplexed data. Further, Jayam does not teach or suggest an apparatus

configured to set the congestion window of a host based upon the transmission rates of the apparatus (first transmission rate) and host (second transmission rate), and the sizes of the congestion windows of the apparatus (first congestion window) and the host (second congestion window). Jayam does disclose a transmission control block (TCB) including a congestion window for facilitating the transmission of data. However, Jayam does not teach or suggest that the congestion window is utilized in any manner other than in accordance with conventional TCP (transmission control protocol). That is, Jayam does not teach or suggest a host computer configuring or otherwise setting the congestion window of a separate, correspondent host computer with which the host computer bi-directionally communicates, similar to the apparatus of amended independent Claim 1.

Applicants therefore respectfully submit that amended independent Claim 1, and by dependency Claims 2-7, is patentably distinct from Jayam. Applicants also submit that amended independent Claims 8 and 15 include subject matter similar to amended independent Claim 1, including a first host configuring or otherwise setting the congestion window of a separate, second host. As such, Applicants also respectfully submit that amended independent Claims 8 and 15, and by dependency Claims 9-14 and 16-21, are also patentably distinct from Jayam for at least the same reasons given above with respect to amended independent Claim 1.

For at least the foregoing reasons, Applicants respectfully submit that the rejection of Claims 1, 3-5, 7-8, 10-12, 14-15, 17-19 and 21 as being anticipated by Jayam is overcome.


Appl. No.: 10/674,957  
Amdt. dated July 19, 2007  
Reply to Official Action of May 17, 2007

### **CONCLUSION**

In view of the amended claims and the remarks presented above, Applicants respectfully submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants' undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Andrew T. Spence  
Registration No. 45,699

**Customer No. 00826**  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Charlotte Office (704) 444-1000  
Fax Charlotte Office (704) 444-1111

**ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON JULY 19, 2007.**

LEGAL02/30433403v2